UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DAVID NORKIN,

Plaintiff,

-against-

DLA PIPER RUDNICK GRAY CARY, LLP,

Defendant.

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Case No. 05 CV 9137 (DC)

DECLARATION OF RICHARD M. ASCHE IN SUPPORT OF MOTION TO REMAND

Richard M. Asche, an attorney admitted to practice before the Courts of the State of New York, declares the following under penalties of perjury:

I am a member of the firm of Litman, Asche & Gioiella, LLP, attorneys for plaintiff David Norkin. I make this declaration in support of the motion of plaintiff pursuant to 28 U.S.C. §§1334(c)(2) and 1452(b) to remand this case to the Supreme Court, New York County, where it originated.

A copy of the Complaint filed in the Supreme Court, New York County is attached hereto as Exhibit A.

A copy of the defendant's Notice of Removal is attached hereto as Exhibit B.

The plaintiff, David Norkin, filed a petition under Chapter 7 of the United States Bankruptcy Code in 1997 in the Bankruptcy Court for the District of Connecticut. The Trustee of Mr. Norkin's bankruptcy estate is Ronald Chorches, Esq. of Wethersfield, Connecticut. Prior to the commencement of this action in state court, my partner, Russell M. Gioiella, and I conferred with Mr. Chorches to see whether (a) he claimed that the causes of action to be asserted belonged to the bankruptcy estate, and (b) he had any objection to Mr. Norkin filing the claim in his own name in state court. Mr. Chorches consented to the filing of this action by Mr. Norkin and advised me that he had no intention of filing a claim on behalf of Mr. Norkin's estate with respect to the subject matter of this case.

In that conversation, we discussed whether if there were a successful outcome of this case, Mr. Norkin would be willing to cede a portion of the recovery to his bankruptcy estate in exchange for a release of certain claims the estate might have against Mr. Norkin. We agreed, generally, that such an arrangement would be beneficial to the parties, and have reached an agreement in principle, but no formal agreement has as of yet been reached, or presented to the Court for approval.

Following removal of this case to federal court, I again spoke with Mr. Chorches, who told me that he has no desire for this case to be in the bankruptcy court, and has no plans to participate in this case.

Conclusion

For the reasons set forth in the accompanying Memorandum of Law, this action should be remanded to the Supreme Court, New York County.

Dated: New York, New York
November 23, 2005

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Richard M. Asche